

REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in condition for allowance or, alternatively, in better form for appeal. Additionally, this amendment addresses issues raised by the Examiner in the final office action. In view of the amendments and the following remarks, favorable consideration and allowance of the application is respectfully requested.

Claims 1-2, 4, 6, 8-13, and 23 are pending in this application. Claims 3, 5, 7 and 14-22 have been canceled. Claim 23 has been withdrawn as the result of an earlier restriction requirement. Applicant retains the right to pursue the subject matter of the withdrawn or canceled claims in one or more related applications.

Claims 1, 4, 6 and 9-13 are pending as a result of amendments made in this response. No new matter has been introduced as a result of the claim amendments.

The Examiner has stated that claim 6 is allowed. Applicants have amended claim 6 to correct a minor typographical error (repeat of the term "ATCC number").

Double Patenting

Applicant was advised that should claim 6 be found allowable, claim 8 would be objected to under 37 CFR §1.75 as being a substantial duplicate thereof.

Applicant has canceled claim 8.

Claim Objections

Claim 4 was objected to because it was dependent upon a rejected base claim. Claim 1 has been amended to overcome the 35 USC §102(e) rejection as discussed in detail below.

Claims 8-13 were objected to because claim 6 and claim 8 are substantially duplicates of each other. Applicant has canceled claim 8 and amended claims 9-13 to depend from claim 6.

Claim 13 was objected to due to improper Markush language. Claim 13 has been amended to include the proper closed language term "and" before "lacto-lipids" at the last line of claim 13.

Therefore, in light of the above-referenced claim amendments, Applicants respectfully request that the Examiner withdraw the objections to the currently pending claims 4 and 9-13.

Rejections under 35 USC §102

Claims 1-2 stand rejected under 35 USC §102(e) as being anticipated by Fuchs et al. (US Patent No. 6,592,863).

The Examiner states on page 4 of the Final Office Action mailed September 22, 2006 that "Fuchs et al. teach *Lactobacillus johnsonii* contained in a probiotic and soy oil also contained in said probiotic, see column 4, line 34 and column 5 line 67."

A claim is anticipated under 35 U.S.C. 102 only if each and every element as set forth in a claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131; *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d, 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987)).

Applicant have amended claim 1 to include a Markush group that does not recite *Lactobacillus johnsonii*. Claim 2 has been canceled.

The Markush group in claim 1 finds support in the specification in paragraph 0030 and as further defined in paragraph 0076.

Therefore currently pending claim 1 of the instant application is not anticipated by Fuchs et al. and Applicant respectfully requests that the 35 U.S.C. §102(e) rejection of this claim be withdrawn.

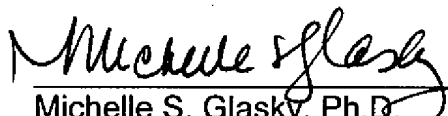
Conclusion

For the foregoing reasons, Applicant believes that currently pending claims 1, 4, 6 and 9-13 are in condition for allowance and requests that a Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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